

LAWRENCE NORDSTROM

IBLA 82-1198

Decided October 12, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 36766.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the loss must be borne by the claimant.

APPEARANCES: Lawrence Nordstrom, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lawrence Nordstrom has appealed the July 14, 1982, decision of the California State Office, Bureau of Land Management (BLM), which rejected the evidence of annual assessment work for 1981, and declared the unpatented Golden Eagle placer mining claim, CA MC 36766, abandoned and void because the evidence of assessment work had not been filed prior to December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The evidence of assessment work was received and date stamped by BLM December 31, 1981, at 7:30 a.m.

Appellant states that he mailed the instrument describing the assessment work for 1981 prior to December 31, which should be acceptable to BLM, as it is to other Federal agencies. The claim at issue has been held for nearly 60 years and appellant alleges that he has spent considerable time and capital in attempting to reopen the workings. For his protection he has relocated and rerecorded the claim in Nevada County, California.

[1] Although it seems the document was mailed on or prior to December 31, 1981, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). Thus, even if the envelope was delayed by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations. Wade McNeil, 66 IBLA 228 (1982); Regina McMahon, 56 IBLA 372 (1981); Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has repeatedly held a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filing. Don Chris A. Coyne, 52 IBLA 1 (1981); Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, *supra*. Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

